

# COVINGTON & BURLING

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July 28, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: MB Docket No. 03-15**

Dear Ms. Dortch:

Vermont Educational Television, Inc. ("VETV"), licensee of noncommercial educational television stations including WVER(TV), Rutland, Vermont ("WVER"); WETK(TV), Burlington, Vermont ("WETK"); and WVTB(TV), St. Johnsbury, Vermont ("WVTB"), would like to share with the Commission as part of the record in this proceeding its experiences as licensee of several border stations that have had great difficulty gaining approval to build out their digital facilities as a result of resistance and delays by Canada in consenting to their DTV applications. VETV hopes the Commission will take the experiences of stations with Canadian coordination issues into account as it crafts new DTV rules as part of the digital transition.

VETV is tasked by the Vermont legislature with providing noncommercial educational television service throughout the state of Vermont. In determining the DTV facilities its stations would apply for, VETV sought to maximize its DTV coverage so that it could provide digital noncommercial educational television service to the entire state and overcome Vermont's rugged terrain. Over the last several years, VETV has worked diligently and expended substantial resources to gain approval for its stations' proposed digital facilities so that it may provide such service throughout the state of Vermont.

VETV timely filed DTV applications for each of WVER, WETK and WVTB by June of 2000.<sup>1</sup> These applications and channel change request were, in

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<sup>1</sup> VETV also filed a petition for rulemaking proposing substitution of DTV channel \*9 for WVER's assigned out-of-core DTV channel \*56 at Rutland, Vermont in July 2001. The Media Bureau adopted a Notice of Proposed Rule Making with respect to this proposal in March 2002. No oppositions were filed with respect to that proposal, and that proceeding is still pending; however, it will remain unresolved until the FCC receives notification that Canada has approved the proposed channel change. VETV has been in contact with Canadian officials via its Canadian counsel and is quite optimistic that approval for WVER's proposed facilities on DTV channel \*9 will be forthcoming soon. The FCC has already granted the DTV application  
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compliance with the Community Broadcasters Protection Act, filed months before the LOU with Canada was signed, so VETV could not take the LOU into account when it submitted the stations' DTV applications. The stations' applications have been pending since that time because the Canadian government has not given concurrence pursuant to the LOU between the United States and Canada. VETV has made every effort to accommodate each of Industry Canada's expressed concerns with respect to its proposed operations; however, VETV has experienced continual problems with, among other things, being unable to determine Industry Canada's methods for measuring interference, which as we understand it have changed several times. VETV has also at times received informal guidance from Industry Canada that certain of its proposals would be acceptable, only to have these proposals ultimately rejected. In addition, our efforts have been complicated by Industry Canada's grant of a Canadian application that conflicted with WETK's pending application and about which WETK received no notice. VETV welcomes any assistance the Commission might be able to provide with respect to working with the Canadian government to find mutually acceptable parameters for its stations' DTV facilities.

As a result of this back and forth with Industry Canada, VETV's stations have been in limbo for more than four years, unable to build out their DTV facilities and launch noncommercial digital service in Vermont. During this time, VETV has worked diligently to seek expeditious grant of its stations' applications, including frequent contact with the staff of the International Bureau, meetings at the Commission with other appropriate staff and retaining not only American attorneys and engineers, but also hiring both a Canadian consultant and a Canadian attorney to work with Industry Canada to secure mutually acceptable solutions and obtain concurrence for the applications. These efforts continue and include active discussion with Canada with respect to all three stations.

VETV is eager to resolve all pending issues with respect to its DTV applications and to construct the facilities it has applied for, which it will use to provide quality digital service throughout Vermont for the long term. VETV has been strongly encouraged by the attention the Commission recently has been focusing on DTV Canadian coordination issues and is hopeful that the Commission will assist us in bringing swift and favorable resolution to our efforts to work out remaining issues with Canada. We also believe that the Commission should not require border stations facing Canadian coordination issues prematurely to build out minimal facilities that may be inconsistent with the ones they hope to be allowed to operate in the long term. The alternative could be wasteful and would divert scarce resources away from border stations' ultimate DTV service.<sup>2</sup> In the meantime, VETV will continue to work diligently, including through its

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of VETV's fourth station, WVTA(TV), Windsor, Vermont ("WVTA"), and WVTA is currently providing digital broadcast service.

<sup>2</sup> As the Commission is aware, construction of DTV facilities for WETK could not commence in any event at this time because of continued delays in obtaining local government approval for the joint DTV tower to be built on Mt. Mansfield.

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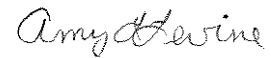
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Canadian consultant and attorney, to obtain approval for its stations' DTV applications, and welcomes any Commission assistance in this effort.

Respectfully submitted,



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